STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
ADMINISTRATIVE ADJUDICATION DIVISION

RE: GLOBAL WASTE RECYCLING, INC. AAD No. 00-001/WMA

DECISION AND ORDER

This matter came before the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD") pursuant to Applicant's request for hearing on the denial of the Construction and Demolition Debris Processing Facility License ("Denial Letter") issued by the Office of Waste Management ("OWM") on December 30, 1999. The hearing was conducted on March 20 and 21, 2000; April 12, 13 and 28, 2000; May 8, 11, 18 and 30, 2000; and June 1 and 7, 2000. A site visit was conducted on June 2, 2000.

Following the presentation of testimony, a briefing schedule was imposed. Applicant failed to file a post-hearing memorandum. The OWM filed a one-sentence "Post-Hearing Memorandum" that stated that it rested on the record. Pursuant to the Order Establishing Briefing Schedule, the hearing was deemed concluded on September 1, 2000.

The within proceeding was conducted in accordance with the statutes governing the Administrative Adjudication Division for Environmental Matters (R.I. GEN. LAWS §§ 42-17.7-1 et seq.); the Administrative Procedures Act (R.I. GEN. LAWS §§ 42-35-1 et seq.); R.I. GEN. LAWS § 23-18.9-9; the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997 ("Regulations"); and the Administrative Rules of Practice and Procedure for the Department of Environmental Management, Administrative Adjudication Division for Environmental Matters ("AAD Rules").

PREHEARING CONFERENCE

A prehearing conference was conducted on February 22, 2000. At the conference, the parties agreed to the following stipulations of fact:

1. Defendant [sic][1], Global Waste Recycling, Inc., is a corporation duly organized and existing pursuant to the laws of the State of Rhode Island and doing business at and owning real property located at Colvintown Road, in the Town of Coventry, County of Kent, State of Rhode Island. Defendant operates said Property as a Construction and Demolition Debris Processing Facility.

2. On May 29, 1998, the Department issued a letter notifying the Defendant of specific deficiencies in the application and plans submitted.

3. The Defendant submitted a revised application and operating plan on July 20, 1998.

4. On December 21, 1998, the Department again notified the Defendant that the application was deficient. This letter required the Defendant to correct all deficiencies on or before February 28, 1999 or the application would be denied.

5. At the Defendant's request, the Department extended the February 28 deadline to April 2, 1999.

6. The OWM issued to this Applicant a Notice of Intent to Deny on June 16, 1999.

7. In accordance with statutory requirements, the DEM held an informational public workshop on the application on June 29, 1999. The DEM held a public comment hearing on the application on September 2, 1999 and the DEM continued to accept written comments until October 2, 1999.

8. On October 1, 1999, the Defendant submitted additional revisions to the application.

9. The Department denied the Defendant's application for a license on December 30, 1999.

10. On January 6, 2000, the Defendant requested a hearing on the denial of the application with the Department's Administrative Adjudication Division.

A list of the exhibits, marked as they were admitted at the hearing, is attached to this Decision as Appendix A.

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[1] "Defendant" is the Applicant in this matter before the AAD.

Pursuant to R.I. GEN. LAWS § 23-18.9-9(a)(7), the appeal was limited to those issues raised by the parties and, as provided in R.I. GEN. LAWS § 23-18.9-9(a)(8), the appeal was required to contain precise statements of the issues presented on appeal and the specific part or parts of the decision of the director which are challenged.

Applicant's request for hearing, dated January 4, 2000, sets forth six bases for the appeal:

1. The application, in fact, has demonstrated that it is and will be operated in compliance of the law and applicable regulations. In fact, the application demonstrates adequate markets for its products and contingencies for allegedly unmarketable materials.

2. The application and the actions of the Applicant fully addresses the storage of processed and unprocessed construction of demolition debris and an adequate groundwater monitoring program.

3. The closure plan is adequate and there are adequate financial mechanisms to ensure closure of the site when and if necessary.

4. The application and the actions of the Applicant address the use of processed and unprocessed waste on site. The Applicant denies that there are odor, dust, or fire problems on or off site.

5. The Department's denial is unlawful as the Department lacks adequate standards and criteria for the issuance or denial of such license.

6. All of the alleged deficiencies contained in the so called "attached List of Deficiencies" are erroneous, beyond the scope of the regulations or are beyond the scope of statute.

OWM 3 at 1.

At the prehearing conference, the parties agreed that the following broadly-defined issue was the issue to be considered by the Hearing Officer at the hearing:

> Whether the application submitted by Global Waste Recycling, Inc. complied with the requirements set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January, 1997 and R.I. GEN. LAWS § 23-18.9-1 et seq.

HEARING SUMMARY

At the hearing, Applicant called four (4) witnesses: **Edward Summerly,** the Senior Project Manager for this application at GZA GeoEnvironmental, Inc. ("GZA") and the primary author of the GZA response submittals to DEM, who was qualified as an expert in geology, hydrogeology, groundwater monitoring and in landfills; **Michael Picozzi,** the sole owner of Global Waste Recycling and of Independent Sand & Gravel; **F. Daniel Russell, Jr.,** the DEM scientist assigned to the project during the application review process; and **Leo Hellested,** Chief of the Office of Waste Management.

Following completion of Applicant's case, the Office of Waste Management announced that it would not be presenting any witnesses and rested.

BACKGROUND

Global Waste Recycling, Inc. ("Global" or "Applicant") is a Rhode Island corporation organized for the purpose of providing a recycling operation for the processing of construction and demolition debris. Appl 1 J, Appendix B at 3. The corporation leases land in Coventry, Rhode Island from Independent Sand & Gravel of Rhode Island. *Id*. at 5.

According to Michael Picozzi, Global initially became involved in establishing this facility through its intervention in a lawsuit involving Bettez Construction Company, Inc., Bettez Recycling, Inc., William Bettez, and the Department of Environmental Management. Mr. Picozzi testified that Global intervened so it could "pay the NOVs" and start a recycling company. Tr. April 13, 2000 at 10.

On June 30, 1995 Global entered into a Consent Judgment (Appl 1 I) with DEM. Tr. April 13, 2000 at 11. According to Mr. Picozzi, Global agreed to process

75% of the materials at the site prior to receiving any new materials to be recycled; remediate any damage to the wetlands; and pay the fine according to a payment schedule. He also placed $12,000 in a joint bank account with Global's name and the DEM. Tr. April 13, 2000 at 12-13. This closure fund increased over time based upon an assessment per ton of existing material on site on the Startup Date, and on new material arriving on site after the Startup Date. *Id.* at 14-15; See also Appl 1 I at 3-4.

Michael Picozzi stated that the fund contained approximately $215,000-$216,000 as of December 30, 1999. Tr. April 13, 2000 at 16.

In the Consent Judgment, dated June 30, 1995, according to the witness, Global also agreed that if the DEM later adopted rules and regulations applying to construction and demolition debris facilities, the facility would comply with the new regulations. New regulations were adopted in January 1997. Tr. April 13, 2000 at 20-21. See also Tr. May 8, 2000 at 838.

Leo Hellested testified that after January 1997, Global submitted certain documents as part of an application for a construction and demolition debris processing facility license. Tr. May 8, 2000 at 839.

Pursuant to R.I. GEN. LAWS § 23-18.9-7(3), a "construction and demolition debris processing facility" is a solid waste management facility. R.I. GEN. LAWS § 23-18.9-9 provides the statutory framework for the Department's consideration of an application to construct and/or operate a solid waste management facility or to expand an existing facility. This latter statute sets forth time frames for public notice of the Department's intent to issue a draft license or to deny the application; for holding an informational workshop; and for holding a hearing to receive public comment. The statute also provides that written comments may be submitted for thirty (30) days following the close of the public comment hearing. Pursuant to the statute, the

Director is required to issue the license or the final denial within ninety (90) days of the close of the public comment period.

As is discussed in the below summarized testimony, the statutory deadline for the close of public comment, including those from the Applicant, was, according to Edward Summerly, too abrupt for Applicant to prepare and submit a revised application. Applicant therefore sought to have all its submittals considered in toto as the application, both at the hearing and, apparently, during the final review by OWM.[2]

It appears from the letter contained in Appendix B of Appl 1 J that the initial application was filed prior to October 14, 1997. On or about October 14, 1997 an Amended and Restated Operation Plan and a Closure Plan were submitted to the Department.

As the parties stipulated at the prehearing conference, on May 29, 1998 the Department notified Applicant of specific deficiencies in the application and plans submitted. A revised application and operating plan[3] were submitted to the Department on July 20, 1998. Again the Applicant was notified, on December 21, 1998, that the application was deficient; Applicant was given until February 28, 1999 to respond. That deadline was later extended to April 2, 1999.

It was after the issuance of this second deficiency letter from the Department that GZA stepped into the picture. Tr. April 12, 2000 at 477-478.

Applicant's key witness was Edward Summerly. Mr. Summerly, an employee of GZA GeoEnvironmental, Inc., testified as to GZA's involvement in the Global

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[2] The Denial Letter issued by the OWM, after listing the materials submitted by Applicant, states that "the sum total of the information you submitted in support of your license application does not comply with the requirements of the regulations and does not support the issuance of a license." OWM 1 at 1. See also Tr. April 12, 2000 at 476.

[3] Applicant did not offer the July 1998 revised application and operating plan into evidence.

application matter. According to the witness, GZA was hired by Global in January 1999. Mr. Summerly explained,

> "…prior to our involvement…several original submittals had been made by Mr. Webster and Garafalo in the form of an operating plan and applications for a C and D recycling facility. At the point we got involved…there were some deficiencies noted in the letter that was dated I think December 21st, 1998. We were brought on board in January, had a meeting in early February with DEM to discuss some of the deficiencies, made an initial submittal called a Response Summary to those deficiencies…" Tr. March 21, 2000 at 160.

He stated that this Response Summary, dated April, 1999, was to respond to the OWM's December 21, 1998 comments and also incorporated some of their "understandings" from the February meeting. Tr. March 21, 2000 at 160-161. The April Response Summary was marked and admitted as "Appl 1 B Full".

Mr. Summerly testified that he had believed the parties were still in the process of working out what the ultimate resolution to some of the deficiencies would be, when "[w]ithout any warning, we received notice that the public workshop was scheduled and the public hearing process had begun". Tr. June 7, 2000 at 1226.

On June 16, 1999 the OWM issued the Notice of Intent to Deny the application that contained the public workshop and public hearing schedule. Pursuant to statutory requirements, an informational public workshop on the application was conducted on June 29, 1999. The DEM then held a public comment hearing, also required by statute, on September 2, 1999.

R.I. GEN. LAWS §23-18.9-9 allowed submission of written comments for thirty (30) days following the close of the public comment hearing. DEM accepted written comments until October 2, 1999.

The "Response to June 16, 1999 Comments", dated September 1999 ("September Response"), also prepared by GZA, was developed in response to the

June 16th Notice of Intent to Deny. Tr. April 12, 2000 at 351. The September Response was submitted to the OWM on October 1, 1999, immediately prior to the October 2nd deadline for public comment. (see *Id*.) That document was marked and admitted as "Appl 1 J Full".

The April Response Summary and the September Response were prepared on Applicant's behalf to address OWM's comments on the perceived problems with the application for the Construction and Demolition Debris Processing Facility license. The September Response's cover letter summarized Mr. Summerly's frustration with the application review process:

> It is our understanding, based on information you provided during the September 23, 1999 meeting, that the department would prefer to review a completely revised Operating Plan versus a response summary to your comments. As you know, we requested a meeting with the department in our April 2, 1999 correspondence and again verbally in June and August. However, RIDEM was not available to meet with us during this five month period. Had we known of the departments [sic] desire to have a revised Operating Plan prior to September 23 we would had had time to revise the Plan. I would like to assure you that once your department and Global reach final agreement on each of the substantive issues, a final revised Operating Plan will be submitted to RIDEM for final review and approval. The revised Operating Plan will incorporate all relevant information from our current and prior response documents including all necessary attachments (e.g. training certificates, sampling and analysis plans, materials tracking information). Appl 1 J, 2nd page of document.

In his testimony, Mr. Summerly stated that he had requested an extension to file a revised Amended and Restated Operation Plan but was told that the timeframe was legislatively mandated and no extensions were available. Tr. June 1, 2000 at 1106.

On December 30, 1999 the Department denied Global's application for a Construction and Demolition Debris Processing Facility license. The Denial Letter (OWM 1) consists of three pages with a ten page attachment ("Deficiencies List" or "List") that identifies the areas where the application was considered inadequate.

Those areas are: I. Facility Closure Plan Deficiencies; II. General Operating Standards Deficiencies; III. General Information and Required Plans Deficiencies; IV. Operating Standards Deficiencies; V. Construction and Demolition Debris: Reuse, Sampling, and Testing Requirements Deficiencies; VI. Variance Request from State Law; and VII. Failure to Submit Final Revised Operating Plan.

The above list of deficiencies set the parameters for the presentation and consideration of the evidence. Related and tangential issues were also probed during the questioning of witnesses. While this related and tangential evidence has been considered in reaching the below conclusions as to whether Applicant has met its burden of proof, it is largely not discussed in this Decision. Below is a summary of the evidence presented by the parties on each item identified on the Deficiencies List.

I. Facility Closure Plan Deficiencies

The Deficiencies List cited several problems with Applicant's closure plan, stating that the application did not include a closure plan with sufficient detail to satisfy all requirements specified in Rules 7.1.06(a); 7.1.06(c); 7.1.06(e); 7.1.06(f); and 7.1.06(h). List at 1. The Deficiencies List also stated that the application contained no closure fund agreement, plan, or financial mechanism to comply with Rule 7.2.08. List at 2-3.

Applicant's proposal for closure was deemed deficient by OWM for noncompliance with the following subsections of Rule 7.1.06:

Rule 7.1.06(a)

Fences, gates and any other security measures to prevent unauthorized access to the site during closure and post-closure activities.

The Deficiencies List recognized that Applicant's facility has a front gate and that Applicant had installed a second gate at the southern access road. Nevertheless,

the OWM concluded that the application did not include adequate measures to prevent unauthorized access and potential vandalism during closure and post closure activities. Unauthorized access was an issue given the facility's proximity to residential areas and past fires at the facility. List at 1.

At the hearing, Mr. Summerly testified regarding access to the site, gates presently on the site, and the general topography of the area. He interpreted Rule 7.1.06 not as a mandate for fencing during closure and post-closure, but as a requirement that information be submitted on fences and other issues. Tr. March 21, 2000 at 188-189, 191.

He described the topography of the Global site as "rather hilly…The surrounding area is hilly and heavily forested." Tr. March 21, 2000 at 218. He identified the main access road from Colvintown Road and stated that a gate with boulders adjacent to it had been installed and that a full fence and gate had been installed at the secondary access. *Id.* at 220. He also stated that at the secondary access road there were boulders and, further from the gate, trees and/or hills and/or gravel piles "so that access would be limited because of boulders." *Id.* at 221. He opined that he would not have been able to drive his truck to the secondary area except through the gate. *Id.* at 221-222.

Part of the site is bordered by a wetlands berm that is "probably 15 to 20 feet high" and there is also a wetland. *Id.* at 222-223.

He stated that there were only two access points to the site that he had observed (the primary access and the secondary access) due to the wetlands areas, the berms, and the hills and the trees. *Id.* at 223.

Under cross examination Mr. Summerly later conceded that the Site Boundary & Radius Plan (Appl 1 J, Figure 2) revealed a gravel road and residence that he had

been unaware of, and that the road continued onto the property of Independent Sand and Gravel. Tr. April 13, 2000 at 139-140. He also acknowledged that Regulations 7.1.06A and 1.7.02 do not reference vehicular access to the property but require prevention of unauthorized access, not specifically of vehicles. Tr. April 13, 2000 at 136-138.

Mr. Summerly testified that if there was a voluntary closure of the facility, Global would cease accepting raw construction and demolition materials. Global would process what was left on site. Wood chips would be sold. The remaining screening materials would be used as alternate cover or would be disposed of in some other manner. The recycling equipment would be salvaged or sold. Mr. Summerly stated that the site would then be returned to its former use as a gravel and stone quarry. Tr. April 12, 2000 at 363-364. It was his opinion that there would be no need for a fence post-closure. *Id.* At 364.

Mr. Summerly also addressed involuntary closure of the facility and concluded that the circumstances would be the same: there would be no need for a fence because the material would be removed from the site. *Id.* at 367.

He dismissed OWM's concern that unauthorized access was an issue given the past fires at the facility because all flammable materials would have been removed from the site. Tr. April 12, 2000 at 367-368.

The witness testified that, after a meeting with certain OWM officials, and based upon the physical limitations and other natural barriers of access to the site, he believed that if gates were installed and boulders were placed to prevent vehicular access, Applicant would be in compliance. Tr. March 21, 2000 at 238.

Leo Hellested also testified on this issue. Mr. Hellested stated that he did not believe that Applicant had made any distinction between closure and post-closure

activities in the closure plan, so the Department could not distinguish between the two in its review. Tr. May 11, 2000 at 916. He opined that even if equipment and materials have been removed from a site during closure, the facility may still present some post-closure issues. This witness speculated that there may be groundwater monitoring or remediation issues that may require security measures such as fences and gates. Tr. May 11, 2000 at 892. There may also be a need for fencing to prevent unauthorized access and dumping at the site during post closure. *Id.* at 894.

Mr. Hellested considered the "post closure" period to have ended once all the Department's concerns have been addressed. As he stated, "After post closure, if you want to dismantle the fence, at that point, that would be fine." Tr. May 11, 2000 at 894.

Rule 7.1.06(c)

Measures taken to remove all remaining refuse and residue.

The Deficiencies List, while recognizing the application's goal that at the time of closing, all raw materials would be processed, that processed materials would be removed from the site, and that all remaining solid waste would be disposed of, faulted the application for its failure to identify costs of third party removal, transport, and disposal of materials upon closure. The List also stated that the application did not adequately address disposal of the materials in the Berm and Phase One areas upon closure of the facility. List at 1.

When asked by Applicant's counsel about the failure to account for third party costs, Mr. Summerly referenced statements in the September Response that they "were working on developing third party closure estimates". Tr. April 12, 2000 at 370. When questioned further by Applicant's counsel about the cost of closing the facility, Mr. Summerly stated at the hearing that it was "an ongoing process at this time". Tr. April 12, 2000 at 371.

The witness briefly addressed disposal of the materials in the Berm and Phase One area, stating that they were operating under the assumption that the two areas were covered by the consent decree and therefore not covered under closure cost estimates. Tr. April 12, 2000 at 377-378.

Under cross examination Mr. Summerly stated that the September Response only provided specific responses to specific questions or issues raised by the Department. It was not meant to present the full Closure Plan. Tr. May 18, 2000 at 938. The full Closure Plan, located in Appendix B, had never been revised. Tr. May 18, 2000 at 939. The witness conceded that the Plan did not state the time period for removal of materials and for restoration; it did not indicate the location for disposal of any materials; nor did it specify the maximum capacity for the facility. Tr. May 18, 2000 at 939-940.

Mr. Summerly stated that Applicant had inquired about submitting more closure information to OWM but was informed that the Department could not accept further submittals because the public comment period had closed. Tr. April 12, 2000 at 374.

Rule 7.1.06(e)

Methods of restricting access and preventing additional waste disposal.

The Deficiencies List referred to OWM's comments regarding prevention of unauthorized access under Rule 7.1.06(a), discussed above.

Rule 7.1.06(f)

Methods of protecting ground and surface water.

The Deficiencies List acknowledged Applicant's April 1999 proposal to develop a Groundwater and Surface Water Sampling and Analysis Plan ("SAP") to which the OWM had responded in its Notice of Intent (NOI) letter. Applicant subsequently submitted a revised SAP and later addressed the NOI comments in its September

Response. The September Response, according to the List, stated that the Applicant had installed the monitoring wells as provided in its original proposal. The List cited Applicant's failure to address the NOI comments regarding the location of the wells. The wells failed to provide adequate monitoring for the areas outside the Berm and Phase One areas. The List also complained that the wells were installed without approval and without notification prior to installation. Finally, the OWM stated in the List that the application failed to provide runoff and drainage calculations to address any net increase in runoff from proposed site improvements at the facility. List at 2.

Mr. Summerly testified, that in order to protect the groundwater during closure and post-closure, GZA first did an assessment of the site where groundwater could be impacted. They identified four potential areas and described for the OWM the existing and proposed additional measures to protect the groundwater and surface water, according to the witness. Tr. March 21, 2000 at 245.

One of the proposals was to build enclosures over the above ground petroleum storage tanks. Installing groundwater monitoring wells to monitor current groundwater conditions was also proposed. Tr. March 21, 2000 at 246. The witness explained that by developing a baseline of existing groundwater conditions, any ongoing impact on groundwater could be identified; the baseline would then be used to test the effectiveness of closure and post-closure activities. *Id.* at 248.

Although the regulations do not mandate installation of monitoring wells, according to Mr. Summerly, the regulations allow it at the discretion of the Department. Tr. March 21, 2000 at 280. With this facility, the OWM had requested that one of the proposed monitoring wells be installed on the easterly side of the wetland protection berm in order to provide additional monitoring for potential contaminants induced by the presence of the berm. Tr. March 21, 2000 at 277. Mr. Summerly stated that when

they attempted to place the well at that location, which would have required excavation through the berm where it was 15 to 20 feet high, facility personnel informed them that that area contained boulder and stump fill. He concluded that due to the "difficult access conditions" and "near impossible drilling conditions", the well should be installed on the westerly side of the berm in the location he had originally proposed. That location was approximately 100 feet from the area requested by DEM. Tr. March 21, 2000 at 278, 279.

The witness stated that he did not believe there were areas down- gradient of the wetlands protection berm where the well could be located. He identified wetlands and a heavily wooded area that he considered would make the areas unacceptable for installation of a monitoring well. Tr. May 18, 2000 at 960-961. He opined that the screenings in the berm were the same as those stockpiled at the site so installing a well down-gradient from the berm was unnecessary since another well down-gradient from the majority of the screenings on site would provide the same monitoring information. *Id.* at 962, 964-965.

Yet Mr. Summerly did not know when the berm was created and had never tested the contents of the berm. Tr. May 18, 2000 at 962, 964.

In the September Response the facility committed to conducting quarterly sampling and analysis during the first year of monitoring with semi-annual sampling thereafter. Tr. May 18, 2000 at 966. Although the Response did not specifically address what would happen during the closure period, Mr. Summerly stated that it was implied that if the testing showed no impact on the groundwater, then there would be no need to test the groundwater during closure. Tr. May 18, 2000 at 967. Otherwise the testing would continue semi-annually through the closure period, according to the witness. Tr. May 18, 2000 at 968.

OWM's counsel questioned the witness as to whether semi-annual monitoring would be sufficient when Applicant had not identified how long it would take for closure. The witness was asked, if the scheduled testing was done in March and September, and if the facility were to begin closure activities in April and conclude by August, would there be any testing during closure. The witness replied: "I don't see that you need groundwater monitoring." Tr. May 18, 2000 at 971-972.

Mr. Summerly was also questioned about the application's failure to include run off and drainage calculations for any increase in runoff due to proposed site improvements. He stated that there were no proposed site improvements at the time the application was submitted. Tr. April 12, 2000 at 395.

Mr. Hellested also testified on this issue. He provided details on what the OWM considered "proposed site improvements" at the facility: additions to the scale house building; roof over a new scale; paving at the front entrance; and a concrete pad and paving in a new bin area. Tr. May 11, 2000 at 909-914.

Rule 7.1.06(h)

> **A Closure Fund or Closure Bond shall be established to ensure proper closure of the facility…**

The Deficiency List stated that the application failed to contain a closure fund agreement, plan, or other financial mechanism. List at 2. The evidence presented on this issue is discussed below.

Rule 7.2.08 Closure Fund Agreement or Closure Bond

> **(a) Every facility shall establish a closure fund agreement with the Department. The facility shall establish and maintain a joint depository account in the name(s) of the facility and the Department at a federally insured financial institution establishing a closure fund as requested by 7.1.06(h) and 7.1.06(i).**

The Deficiencies List stated that the application did not contain a closure fund agreement, plan, or financial mechanism to meet the requirements of this rule. The List specifically found that the closure fund established under the 1995 Consent Judgment was inadequate to provide for the removal and proper disposal of materials currently at the site. The List also faulted the application for its failure to provide an accurate estimate of the maximum amounts of materials (processed and unprocessed) that may require third party removal during closure. The application did not include cost of removal and disposal of all stockpiled materials and those materials in the Berm and Phase One areas. List at 3.

Mr. Summerly testified that he had understood that Global and the Department had established a joint account that in September 1999 contained approximately $200,000 and disagreed with the List's representation that there was not a closure fund agreement. Tr. April 12, 2000 at 371-372, 397-398.

Mr. Summerly also testified that Global had obtained a surety performance bond in the amount of $500,000 to ensure the closure activities were properly conducted. Notwithstanding making this representation to the Department, the witness acknowledged that he never saw the bond and was not involved in obtaining the bond. Tr. May 18, 2000 at 940-941. He admitted that although the September Response stated that the $500,000 bond had been obtained, "[i]t doesn't say that it would be adequate." Tr. May 18, 2000 at 942-943.

Mr. Summerly agreed under cross examination that Rule 7.2.08[4] required the closure fund to be calculated based on the amount necessary to properly close the facility when it is at full capacity. Tr. May 18, 2000 at 985. The witness disputed,

[4] Rule 7.2.08(c) requires, in part, that "the facility must have on deposit in the Closure Fund at least one tenth (1/10) of the amount necessary to properly close the facility when it is at full capacity."

however, how the term "full capacity" applied to a recycling facility because materials were received at the facility but also shipped out of the facility. Tr. May 18, 2000 at 986. GZA had expected to base the closure cost estimate on the operating plan's request for on-site storage of raw materials and the processed finished materials already at the facility. Tr. May 18, 2000 at 988. Yet at the time Mr. Summerly drafted the September Response, closure cost estimates had still not been obtained and it was unknown how much it would cost to close the facility. Tr. May 18, 2000 at 941-942.

Mr. Hellested was also questioned by Applicant's counsel regarding closure costs. The witness concluded that "[a]t this point, we don't have adequate funds to do what he'd be required to do" in order for DEM to clean up the site in the event of an involuntary closure of the facility. Tr. May 11, 2000 at 896.

Facility Closure Plan Deficiencies - Conclusion

Applicant offered as full exhibits two iterations of the facility's operation plan: the first, marked Appl 1 F, was part of the June 30, 1995 Consent Judgment; the second, the October 1997 Amended and Restated Operation Plan and the Closure Plan, was set forth in Appendix B of Appl 1 J. The July 20, 1998 revised application and operating plan, mentioned in stipulation 3 from the Prehearing Conference, was not offered as a full exhibit.

I have reviewed the October 1997 Amended and Restated Operation Plan, and particularly the Closure Plan, as well as GZA's two responses (the April Response Summary and the September Response) to determine if Applicant has met its burden to prove that its closure and post closure proposals complied with the requirements set

forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

The Closure Plan document is a meager one and a half pages. It proposed one gate at the primary entrance; fencing of the premises was not even mentioned. Disposal of the materials in the Berm and Phase One areas was not addressed. The Plan contained no provision for groundwater or surface water monitoring. The Plan stated that a closure bond had been established for the facility and was currently in place but failed to state the bond's amount or manner of calculation. No mention was even made of a closure fund agreement.

The September Response continued to argue against the need for fencing despite the regulatory requirements. Applicant did not request a variance.

Costs of third party removal, transport and disposal had still not been calculated and that information was necessary in order to determine an appropriate closure fund or bond. Disposal of materials in the Berm and Phase One areas was still not adequately addressed.

As for those materials in the Berm, the OWM had specific concerns because the materials were generated prior to Global's operation of this facility. The OWM requirement for placement of a monitoring well down- gradient from the Berm was reasonable under these circumstances. Although Mr. Summerly testified that any location down-gradient would be difficult, perhaps placement in the wooded area could be achieved. Applicant failed to meet its burden of proof that the proposed groundwater monitoring program would be adequate and in compliance with the regulations.

While the April Response Summary and, particularly, the September Response provided additional information and attempted to supplement and revise the October

1997 Amended and Restated Operation and Closure Plans, there remain glaring inadequacies with Applicant's submittals. The testimony provided some clarification but clearly OWM was justified and required to find that Applicant's submittals did not comply with the closure and post closure requirements of the regulations and did not support the issuance of a license.

II. General Operating Standards Deficiencies

This section of the Deficiencies List considered the provisions of Regulation No. 1.7.00 and its subsections that apply to all composting facilities and solid waste management facilities. As stated in Rule 1.7.01, applicants must also comply with the operating regulations for the particular type of facility. These latter operating regulations and the application's deficiencies (as identified by OWM) are discussed below in Section IV, entitled "Operating Standards Deficiencies".

The Deficiencies List cited two areas where the application was considered inadequate in its compliance with Rule 1.7's General Operating Standards:

Rule 1.7.02(b)

> **Physical Restraints: There shall be gates at all entrances to facilities which will prevent access to the facility, except at such times as permitted under Rule 1.7.02(a) above. These gates should be locked when the site is unsupervised. Fences will be required around the facility to limit unauthorized access.**

According to the Deficiencies List, the application did not include adequate measures or physical restraints to prevent unauthorized access after normal operating hours. The OWM specifically cited Applicant for the lack of existing or proposed fencing around the facility to limit unauthorized access. List at 3.

Mr. Summerly agreed with Applicant's counsel that this section of the Rules applied to general access to the site and not just vehicular access; he also agreed that

the section dealt with access during operations, not closure. Tr. March 21, 2000 at 291. Notwithstanding that the Rule's scope is broader than preventing access during the closure and post-closure periods, the witness maintained that his earlier response (citing the topography and difficulties for vehicular access) for preventing access during the closure periods (see discussion of Rule 7.1.06(a) above) satisfied this Rule's requirements. *Id.* at 292.

Rule 1.7.15

> **Buffer Zones: All composting facilities and solid waste management facilities shall be required to maintain a buffer zone area that serves to mitigate nuisance impacts such as dust, litter, odor, and noise from composting facilities or solid waste management facilities to human activities. The buffer zone must be an area of undeveloped vegetated land retained in its natural undisturbed condition, or created to resemble a naturally occurring vegetated area, or approved equal, that is not used for any composting facility or solid waste management facility operations.**

In citing the above Rule, the Deficiencies List also referenced Rule 7.2.05, which provides in pertinent part:

> Buffer: A buffer zone, or approved equally protective alternative measure(s) must be identified and maintained between all processed and unprocessed construction and demolition debris stockpiles, processing activities and the property line of the facility. Said buffer zone must be of sufficient distance to address dust, odors, litter, or any other concern or condition identified by the Department…

In the Deficiencies List, the OWM objected to Applicant's proposed buffer zone stating that the application "proposes the movement and stockpiling of materials in the Phase One stockpile area" yet the Phase One area was outside the proposed buffer zone and adjacent to a residential area. List at 3.

Mr. Summerly testified that it had been his understanding that the Phase One stockpiles were being removed so they were not incorporated in the plan. Tr. June 1, 2000 at 1015-1016. Also, according to the witness, the piles were subject to the June 30, 1995 Consent Judgment and thus were considered outside the scope of the permit

application. Tr. June 1, 2000 at 1016; Tr. April 12, 2000 at 401-402. He testified that the Phase One stockpile material was removed before the application was denied. Tr. April 12, 2000 at 402.

The Site Plan provided in Appendix A of the September Response identifies the location of the Phase One Stockpile Zone and contains the notation, "Proposed Wood Chip Storage Cells". Processed materials would therefore be stored well outside the buffer zone identified by Applicant.

General Operating Standards Deficiencies - Conclusion

Again I have considered the testimony in conjunction with the October 1997 Amended and Restated Operation Plan and the two submittals prepared by GZA. The fencing issue remains inadequately addressed by Applicant. Rule 1.7.02(b) requires that the facility be fenced. No variance was requested by Applicant. Applicant justified its failure to fence the area by arguing that the topography of the site prevents vehicular access. The Rule is not limited to restricting unauthorized vehicular access, however.

Additionally, Applicant failed to provide a buffer zone around the Phase One Stockpile Zone that was identified on the Site Plan as an area that would have continued use for stockpiling materials.

Applicant has therefore not met its burden to prove that its proposals comply with the General Operating Standards (Rule 1.7.00 et seq.) set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

III. General Information and Required Plans Deficiencies

The Deficiencies List cited numerous areas where the OWM concluded that the application provided insufficient information to satisfy the regulatory requirements identified below.

Rule 7.1.01(d)

> **No license or registration shall be issued or be renewed if the facility has any existing violations of these rules and regulation [sic] during the time of application or request for renewal. The Department is authorized to deny, suspend, or revoke a license or registration, or deny a license renewal or registration renewal where it finds there has been a failure to comply with regulations established by the Department, or where the applicant, licensee, or registrant is not in compliance with any approved operating plan or engineering plans adopted pursuant to these Rules and Regulations. The Department may also issue a Notice of Violation with administrative penalties…**

The Deficiencies List referenced written notification to Applicant on five (5) occasions during the pendency of the application, regarding the nature and extent of existing violations in the operation of the facility. List at 4.

Mr. Summerly testified that GZA had researched the records at the Department and had not discovered any outstanding Notices of Violation. Tr. March 21, 2000 at 301-303. Mr. Summerly acknowledged under cross examination that he was aware of deficiencies on the property and items of noncompliance that the Department had advised Global to resolve. Tr. June 1, 2000 at 1026-1027.

Rule 7.1.05, subsections (b), (e), (g), (j), (k), (n), (p), (q), (s), (t), (u) and (v).

> **Operating Plan: An operating plan shall be submitted by all construction and demolition debris processing facilities and other processing facilities that accept 150 tons per day or less of construction and demolition debris. Said plan shall include, at a minimum, information on all of the areas listed below. The duration of the operating plan shall equal that of the license, where applicable, and shall be updated with each application for renewal or earlier if necessary…The following information, at a minimum, shall be included in the plan:**

(b) Operating hours

The Deficiencies List stated that the application's Operating Plan provided that

> "incoming waste will be accepted from 7 a.m. to 7 p.m. or sunset, whichever is earlier. Work will be conducted between 6 a.m. and 7 p.m., and waste processing will begin at 7 a.m. Waste will only be accepted during daylight hours for inspection purposes. The applicant is also requesting loading hours between 5 a.m. and 10 p.m. for offsite trucking." List at 4.

The Deficiencies List referenced Rule 1.5.05, which provides as follows:

> Zoning: Granting of a license, license renewal, registration or permission for an equipment addition shall in no way affect the applicant's responsibility to meet all zoning and other local ordinances, nor the applicant's responsibility to obtain any local permits, except as provided by Rhode Island General Laws.

The List suggested that the facility's hours would be in conflict with the Town of Coventry's ordinance that requires: "All work shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 Noon on Saturdays. No work shall take place on Sundays and legal holidays." List at 4.

Mr. Summerly readily admitted that he was not familiar with the town ordinances regarding hours of operation at the facility. Tr. June 1, 2000 at 1038-1039. He did not know whether the proposed operating hours violated local law; did not know the actual operating hours of the facility; and was unaware whether the facility had already violated the zoning ordinance of the Town of Coventry. Tr. April 12, 2000 at 413.

Rule 7.1.05(e)… Dust Control Program

The Deficiencies List stated that the Department had received a number of complaints concerning dust travelling offsite into the surrounding neighborhood. The List stated that although the facility had recently paved the entrance road and the application proposed measures such as spraying water, spreading calcium chloride and sweeping, the OWM did not consider the measures to prevent fugitive dust to be

adequate. The List specifically identified inadequate measures to prevent fugitive dust from emanating from the entrance roads, the processing area, the storage areas, and roads accessing the areas. List at 4-5.

Mr. Picozzi testified about Global's dust control program. The facility uses calcium chloride and a water truck to keep the dust down because dust interferes with the intakes on diesel trucks and with other machinery. To prevent dust from leaving the entrance of the facility, the pavement was extended. Tr. April 28, 2000 at 692. He admitted that dust will go offsite with departing trucks but that they scrape the driveway and "even go sweep the town road a few times". *Id.* at 693.

Mr. Summerly testified that he never saw a dust problem at the site. Tr. June 1, 2000 at 1043.

Mr. Hellested also testified on this issue. He stated that the OWM applied industry and regulatory standards to determine whether Global's dust control plan was adequate. Tr. May 8, 2000 at 865-867. Measures that have been approved at other facilities include the use of watering tanks, paving areas to restrict dust and planting vegetation. The witness concluded that the standards depend on the specifics of a particular site and that each site is different. *Id.* at 866.

Mr. Hellested stated that although Global's dust control program included spraying water and using calcium chloride to minimize dust, the manner in which they would be utilized was inadequate. The complaints from nearby residents indicated to OWM that the measures were not being employed in the manner proposed or the facility was not using the measures sufficiently in the areas that were generating dust. Tr. May 11, 2000 at 878, 881.

Rule 7.1.05(g) Odor Control Program

The Deficiencies List stated that recent Department inspections confirmed that hydrogen sulfide odors were emanating from the decomposing materials in the Phase One area, adjacent to a residential area and outside the proposed buffer zone. The OWM further noted that neighbors had complained at the public hearing that odors were leaving the site and reaching the surrounding neighborhood. List at 5.

The List also confronted Applicant's inconsistent stance that odors would be controlled through frequent removal of materials yet Applicant requested permission to store waste on site for up to twelve (12) months. at 5.

Mr. Summerly testified that he had been to the facility when there were odors present on site, but had not noticed any odors relating to the facility off the property. He had not noticed anything on the site that would cause an odor problem "beyond the point of compliance" - which term he explained as the property boundary or the facility boundary. Tr. April 12, 2000 at 421. He concluded that since he had never noted odor problems, the proposed controls were adequate. Tr. April 12, 2000 at 422.

During direct as well as under cross examination, Mr. Summerly stated that he had detected odors on site that appeared to be generated from under the screening piles. He concluded that small amounts of gypsum in the piles was degrading and generating hydrogen sulfide (the "rotten egg" odor). Tr. April 12, 2000 at 327-328; Tr. June 1, 2000 at 1055-1056.

The method proposed to control odors was to turn the screening piles to prevent anaerobic decay. Tr. April 12, 2000 at 328-329. The witness did not adequately address controlling odors in piles that had already become anaerobic. Tr. June 1, 2000 at 1056-1058. He admitted that while the September Response addressed preventing raw materials from becoming anaerobic, it did not address odor

control for processed materials. Tr. June 1, 2000 at 1062-1063. He assumed in preparing the September Response that odors would only be generated from screenings and raw material and tailored his response to future piles at the site, not existing on-site material. Tr. June 1, 2000 at 1062-1063.

Mr. Russell also testified on this issue. He stated that on three to four occasions in 1999 he had noted the smell of hydrogen sulfide gas at the site. Tr. May 8, 2000 at 811-812, 817. He had specifically noted the smell in the Phase One area where the "dirty" wood chips and the screenings were located. *Id.* at 814-815.

Rule 7.1.05(j) Groundwater Monitoring Program if required by Rule 7.2.04

The Deficiencies List stated that Applicant failed to address the Department's comments in considering the location of the monitoring wells. The OWM considered that the wells installed by Applicant did not provide adequate monitoring of the areas outside of the Berm and Phase One areas. List at 5.

Mr. Summerly had testified that the groundwater monitoring program for closure did not contain any groundwater monitoring down- gradient of the Phase One stockpile or the berm. Tr. June 1, 2000 at 1065-1066. With further questioning it became clear that the operating plan likewise failed to contain groundwater monitoring down-gradient of the Phase One stockpile or the berm. Tr. June 1, 2000 at 1066-1068.

Rule 7.1.05(k) Final disposal quantities and arrangements for non-recyclables and processing residue

The Deficiencies List cited the application's failure to state and commit that processed and/or unprocessed wastes that cannot be recycled and removed from the facility within the required timeframes would be disposed of at a licensed solid waste disposal facility. List at 5.

Mr. Summerly testified that a variance from the required timeframes had been requested and subsequently denied by the Department. Applicant therefore would have to comply with the statutory and regulatory timeframes for recycling and removal or for disposal at a licensed solid waste facility. Tr. April 12, 2000 at 423-424.

Mr. Summerly stated that at the time the September Response was submitted to the Department, Applicant was pursuing several options regarding the screening material, particularly its use as fill or alternate landfill cover. Tr. June 1, 2000 at 1069-1071. The September Response stated that whatever end uses that were ultimately selected would be determined by the analytical testing results of the screenings and by construction project specific needs. Tr. June 1, 2000 at 1071-1072. Mr. Summerly conceded that at the time the September Response was submitted to the Department, Applicant had not decided on the final disposal arrangements for the screenings. Tr. June 1, 2000 at 1072. He also conceded that the September Response did not disclose any final disposal arrangements for the hard product stockpile. Tr. June 1, 2000 at 1071.

Rule 7.1.05(n) Description of program for providing records containing the date, time, weight of construction and demolition debris to be processed and registration of each vehicle unloading construction and demolition debris at the facility

In the Deficiencies List, the OWM found that the application's provision for monthly summaries of the weight of materials received by the facility and the weight and type of materials leaving the facility did not satisfy the requirements of the Rule. List at 5-6.

Mr. Summerly testified regarding his general knowledge of Global's computer tracking of incoming and outgoing materials. He stated that trucks were weighed with their loads upon entering the facility area and later upon their departure. He was

uncertain whether the materials were recorded at the end of each day or the end of each week. Trucks arriving to retrieve recyclable materials would be weighed first upon arrival and later with their loads upon departure. That information would also be entered into the computer on a regular basis, according to Mr. Summerly. Tr. April 12, 2000 at 425-426.

An example Summary of some of the facility's records had been submitted to the Department as part of the application process. That Summary is located in Appendix H of the September Response. The document summarized the weights of the incoming raw products during the period July 1, 1997 through September 27, 1999. Weights of all outgoing materials and some of the materials that were left on site were also summarized in the document. Tr. April 12, 2000 at 424-425.

Mr. Summerly testified that while a computer program was in place at the time the September Response was submitted, Global was working with its software consultant to implement changes to the program. The changes were being made in order to provide clearer information to Daniel Russell at OWM. Tr. June 1, 2000 at 1073-1074.

Rule 7.1.05(p) Fire control and prevention provisions including a contingency plan for fires in storage areas and/or unprocessed stockpile areas

The Deficiencies List stated that the application failed to contain a fire control and prevention plan. List at 6.

Mr. Summerly testified that it was his understanding that Applicant (not GZA) was working directly with the Coventry Fire Department on a plan. Tr. June 1, 2000 at 1079. He was unaware whether any fire control or prevention plan was ever submitted as part of the application. *Id.* at 1081. He also testified that although he had been told

that an emergency response plan had been prepared, he was unaware whether it was ever submitted to the Department. Tr. June 1, 2000 at 1083-1084.

Rule 7.1.05(q) Methods describing how non-processible waste, hazardous waste and waste not authorized by the Department will be identified, handled and removed from the facility

The Deficiencies List stated that while Applicant had addressed some provisions of this Rule, the application failed to adequately address the timely removal of unauthorized wastes from the facility. Specifically, the OWM was concerned with the application's provision that unauthorized waste inadvertently received at the facility would be transported offsite within ninety (90) days. The OWM stated that unauthorized material cannot be categorized as the material specified in Rule 7.2.02(a,b) -- which in some cases may be stored on site for up to three (3) months -- and that unauthorized material must be promptly identified, handled, and transported off site. List at 6.

In his testimony, Mr. Summerly opined that the Department was incorrect in its determination that Global had failed to adequately address the timely removal of unauthorized waste. He stated that unacceptable non-hazardous material, when dumped on the tipping floor, would be immediately reloaded onto the depositing truck. As for hazardous waste, the witness referred to the Site and Safety Procedures Manual. (Appl 1 J, Appendix E). He stated that the plan "will be expanded to identify how unacceptable materials will be handled and removed from the facility" (reading from Appl 1 J at 13/22). Tr. April 12, 2000 at 429-430. The amended plan would provide that the hazardous materials would be immediately stabilized and containerized, then tested. The waste would then be manifested off the site within 90 days. Tr. April 12, 2000 at 430.

Unacceptable non-hazardous waste not identified on the tipping floor but discovered later, would be placed in bins on site and removed to the landfill when the bin is full, or within 90 days. Tr. April 12, 2000 at 447.

Rule 7.1.05(s) Identification of how "recyclable materials" and "recyclables" which cannot be marketed will be disposed of

The Deficiencies List stated that the application did not identify how these materials will be disposed of. List at 6.

Mr. Summerly testified that when the September Response was submitted, Global had suitable markets for most of its recyclable materials. Tr. June 1, 2000 at 1092. Wood chips were transported to burn plants. Aggregate material (concrete and brick) was expected to be used on site as fill even though as the witness acknowledged, the facility would need Department approval for the use. According to Mr. Summerly, the Department wanted some of the wood and wire removed before the proposal would be approved. Tr. June 1, 2000 at 1092-1094. The use of screenings, according to the September Response, was being evaluated. Appl 1 J at 14/22.

The witness provided further explanation of the considered uses for the screenings but agreed that the proposed uses all required Department approval. Tr. June 1, 2000 at 1094. Mr. Summerly admitted that his response to the Department's comment on this issue did not address what would happen with the screenings if the Department's approval was withheld. Tr. June 1, 2000 at 1095.

Mr. Picozzi also testified on this issue. He identified screenings as a recyclable material that Global was not marketing; the material was stored on site and had also been hauled to the Central Landfill pursuant to a recent approval from the Department. Tr. April 28, 2000 at 679.

Rule 7.1.05(t) Sampling and Testing plan for processed material containing that information required by Rule 7.3.00 of these Regulations

The Deficiencies List stated that Applicant's proposed Product Sampling and Analysis Plan ("PSAP") submitted on September 2, 1999, failed to provide an adequate testing schedule or frequency given the variability of the waste stream. List at 6.

Mr. Summerly testified that the PSAP, which is set forth in Appendix D of the September Response, contained almost verbatim the recommended sampling from the regulations. Tr. April 12, 2000 at 452. The PSAP focused on the testing of wood chips and screenings. He considered that the only products that required chemical testing under the DEM Regulations were the wood chips and screenings. Tr. June 1, 2000 at 1111-1113, 1115.

When questioned about the details of the PSAP, the witness conceded that although the facility had requested approval for use of the screenings as alternative fill, the PSAP did not specify any sampling and testing for that material. The witness continued, however, that the proposal from Central Landfill as the receiving facility, had included a full sampling and analytical program. Tr. June 1, 2000 at 1121-1122.

The PSAP only addressed the end uses that Global then had in place and "the most promising avenues" that were being considered at the time, according to Mr. Summerly. Tr. June 1, 2000 at 1132. He considered that if other uses were identified, they would require DEM approval and testing would be necessary on a project specific basis. Tr. June 1, 2000 at 1129, 1134.

Rule 7.1.05(u) Identification of proposed markets for "recyclable materials" and "recyclables"

The Deficiencies List stated that the application failed to adequately identify proposed markets for the volume of waste being received and stockpiled at the facility. List at 7.

Mr. Summerly testified that in the April Response Summary they had identified the proposed markets for the recyclable materials and recyclables: Global would sell woodchips to alternative energy burn plants; scrap metals to dealers; and fines generated in the screening process were being evaluated for use as alternative cover at Central Landfill. He considered that this "adequately" identified the market. Tr. April 12, 2000 at 319, 344-345.

Mr. Summerly elaborated that all of the wood chips would be sold to alternative burn plants and all of the scrap metal would be sold to dealers for recycling. Tr. June 7, 2000 at 1143-1146. He agreed that the screenings were still being evaluated at the time the September Response was submitted and did not know if Applicant would be able to sell the material to the suggested gravel pit operations and industrial sites. Tr. June 7, 2000 at 1145-1149. While the September Response proposed a further use of the screenings as alternative daily cover at Central Landfill, the witness allowed that the material did not meet the testing requirements. The material was later approved for use as alternate subgrade fill at Central. Tr. June 7, 2000 at 1150-1151.

Mr. Summerly believed the OWM's real complaint on this issue was that Applicant had not identified the specific receiving facilities for the recyclable materials as opposed to the proposed markets that were identified by Applicant. Tr. April 12, 2000 at 456. He stated that, with the exception of wood chips, Rule 7 did not require identification of buyers for the products. *Id.* He further stated that Global had offered

to identify specific buyers if the information was kept confidential. Tr. April 12, 2000 at 457.

Under cross examination, Mr. Summerly acknowledged that the Department had stated in the June 1999 Notice of Intent to Deny that it would keep the customer list confidential. Despite this representation from the Department, Mr. Summerly stated that, "Mr. Bettez and Mr. Picozzi apparently weren't comfortable with that and never provided the list to GZA." Tr. June 7, 2000 at 1152-1153.

Mr. Picozzi also testified on this issue. He stated that the facility's wood chips were sent to customers in Maine and New York and that he had agreed to provide their names and addresses if the Department stipulated that the information would not be made public. Tr. April 28, 2000 at 693-694. Global considered it harmful to its business interests if the information was accessible to competitors. Mr. Picozzi stated that he was unaware whether the Department had ever agreed to keep the information confidential. Tr. April 28, 2000 at 694.

Rule 7.1.05(v) Identification of provisions or methods of solid waste and leachate containment

The Deficiencies List stated that the application failed to adequately address this issue. List at 7.

Mr. Summerly first explained that leachate is the contaminated water that results from precipitation or rainfall percolating through solid waste. He considered that they had adequately addressed leachate containment by stating that the solid waste materials were contained in roll-offs or storage bins demarcated by concrete yard blocks, and that they would be transported off-site on an as needed basis within ninety (90) days. Because of the type of solid waste, the waste being stored off the ground, and the "relatively small volumes of on-site waste storage", there was limited

potential for significant leachate generation, according to the witness. Tr. April 12, 2000 at 346-347; also, Appl 1 B at 12-13/18.

Under cross examination, however, Mr. Summerly stated that the September Response statements regarding "solid waste" on this issue only referred to the waste generated at the facility and not the construction and demolition debris raw product on site. Tr. June 7, 2000 at 1154-1157. Notwithstanding the above conclusion, Mr. Summerly agreed that the Refuse Disposal Act defined construction and demolition debris as solid waste. Tr. June 7, 2000 at 1157-1158. He also agreed that Regulation 1.3.47 defined construction and demolition debris as solid waste. *Id.* at 1158. Applicant's response on this issue therefore did not address, although required to, any leachate containment for the raw construction and demolition debris materials. Tr. June 7, 2000 at 1159-1160.

The September Response also did not address leachate containment involving the hard products stockpile. Tr. June 7, 2000 at 1160.

The witness admitted that the September Response did not explain how any leachate would be contained, but only stated that it would be generated in small amounts. Tr. June 7, 2000 at 1161-1162.

General Information and Required Plans Deficiencies - Conclusion

I have considered the testimony, the October 1997 Amended and Restated Operation Plan and the two GZA Responses and conclude that Applicant has not met its burden to prove that its proposals comply with the General Information and Required Plans (Rule 7.1.00 et seq.) section of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997, for the reasons discussed below.

Rule 7.1.01 (d) requires that the facility be free of "existing violations". The Rule cannot be interpreted in the manner Applicant suggests, that is, that the facility be free of outstanding notices of violation. I reach this conclusion because the section also contains the following language: "The Department may also issue a Notice of Violation with administrative penalties." The section clearly comtemplates that a facility may have an existing violation without a Notice of Violation having been issued. Accordingly, the facility must prove that it is complying with the rules and regulations during the time of application or request for renewal in order to obtain a license. Applicant did not meet this burden.

The evidence demonstrates that Applicant failed to meet its burden of proof on numerous sections of Rule 7.1.05. Applicant did not prove that the operating hours were in conformance with the Town of Coventry's ordinance; did not prove that the odor control program addressed existing on-site material or processed materials; and failed to prove that a monitoring well could not be located down-gradient of the Phase One Stockpile or the berm as requested by the Department.

Applicant also failed to prove that the proposals for final disposal of non-recyclables and processing residue were adequate since disposal of the screenings and the hard product stockpile had not yet been decided by Applicant in its final submittal to the Department.

Applicant provided a sample Summary of the facility's records to show compliance with Rule 7.1.05(n) but the Summary fails to demonstrate that Applicant will provide the information required in the Rule. It is a general summary for a lengthy period and does not contain the "date, time, weight of construction and demolition debris to be processed and registration of each vehicle unloading construction and demolition debris at the facility" that is required by the Rule. Applicant therefore did

not prove that its Plan or proposals contained a program that reports the information required by the Rule.

Rule 7.1.05(p) requires that the Operation Plan contain fire control and prevention provisions. Although Applicant may have worked with the Washington County Fire Department and the Coventry Fire Department, the facility failed to prove that a plan was ever submitted to the DEM.

Applicant also failed to prove that its Plan and submittals complied with Rule 7.1.05(q). The Site and Safety Procedures Manual provided by Applicant is addressed to Global's potential and existing customers and provides scant information as to how non-processible waste, hazardous waste and waste not authorized by the Department will be identified, handled and removed from the facility by Global's employees.

The exhibits and testimony consistently pointed to the difficulties Applicant was facing with the use of the screenings. Applicant considered them to be a recyclable material but had found only one market (the Central Landfill had recently received approval for its use as alternate subgrade fill); the material was otherwise stockpiled on site. The Plan and other submittals did not identify how disposal of unmarketed screenings would be achieved. Applicant therefore did not prove that its Plan and submittals complied with Rule 7.1.05(s) and Rule 7.1.05(u).

Despite assurances from the Department that Applicant's customer list would be kept confidential, the information was never provided to the Department. While Rule 7.1.05(u) does not specifically require identification of customers for recyclable materials, it is consistent with the Rule's requirement that proposed markets be identified. How else can the Department determine if the market is real? The Department's request for the information is therefore within the penumbra of the Rule and Applicant failed to comply with the Rule.

Applicant's proposal for solid waste and leachate containment likewise failed to comply with Rule 7.1.05(v). The September Response failed to address leachate containment for the raw construction and demolition debris materials on site and for the hard products stockpile.

I find that Applicant has met its burden to prove compliance with Rule 7.1.05(e), through the facility's proposed dust control program. The additional paving at the entrance, spraying water and calcium chloride, and sweeping appear to be adequate measures of dust control. The OWM cited complaints from nearby residents as the basis for its conclusion that the measures were inadequate or were not being utilized sufficiently in the areas that were generating dust. While the OWM may have good grounds for its conclusion, the evidence was insufficient to rebut Applicant's evidence of compliance on the issue of dust control. No evidence was presented regarding the complainants, the circumstances that generated the complaints, or the timeframe when the complaints were made.

I also find that Applicant has met its burden to show compliance with Rule 7.1.05(t), requiring a sampling and testing plan for processed material. The evidence presented by the OWM is insufficient to rebut Applicant's evidence that the testing schedule and frequency are adequate.

IV. Operating Standards Deficiencies

This section of the Deficiencies List considered provisions of Regulation No. 7.2 that apply to the particular facilities that process construction and demolition debris and identified the areas where the OWM considered this application to be inadequate.

The Deficiencies List stated that the application contained insufficient information to satisfy the requirements of the below-identified Rules.

Rule 7.2.02 Storage

(a) The storage of unprocessed and/or processed construction and demolition debris stockpiles is limited in size to the financial assurance to be posted for closure costs as required in Rules 7.1.06 and 7.2.08. For example if the closure cost estimate is based on the disposal of a 1000 ton stockpile of unprocessed construction and demolition debris, the facility must limit its unprocessed stockpile to 1000 tons.

The Deficiencies List stated that Applicant had proposed a storage limit of approximately 8,000 tons for "unprocessed" materials and no limit for "processed" materials. The OWM found that the application's failure to establish a maximum upper limit for processed construction and demolition debris to be stored on site at any one time, meant that the application failed to meet the requirements of this Regulation. List at 7.

When asked about the limit for processed materials, Mr. Summerly testified that it was "Global's opinion" that the storage requirement of Rule 7.2.02 did not apply to processed recycled products. Tr. April 12, 2000 at 349. Later, under cross examination, Mr. Summerly agreed with the Department that, contrary to Global's opinion, Rule 7.2.02(a) indeed required information regarding storage on processed construction and demolition debris stockpiles. Tr. June 7, 2000 at 1167-1168. He believed that the application should have included information regarding storage requirements of both the unprocessed and the processed construction and demolition debris materials. Tr. June 7, 2000 at 1169.

Rule 7.2.02 Storage

(b) The facility must be able to demonstrate through records maintained at the facility that seventy-five percent (75%) of the "recyclable material" and "recyclables" received by the facility is processed and removed from the site within six (6) weeks of receipt on a continuous basis, and in no case shall the facility store material on site for over three (3) months.

The Deficiencies List cited the application's failure to demonstrate "suitable" record keeping by the facility to demonstrate compliance with this Rule. List at 8.

Mr. Summerly testified that Applicant did not provide records and mechanisms to show compliance with the three-month storage requirement because the facility could not comply with it. Tr. June 1, 2000 at 1077. The witness stated that Global also did not have the capacity, given the incoming material stream, to process 75 percent of the recyclable material within six (6) weeks. Tr. June 7, 2000 at 1172. He stated that if a longer period of time were allowed, the facility would be able to demonstrate compliance with the intent of the Rule. As a consequence of its inability to comply within the required timeframe, the Applicant had requested a variance to allow unprocessed recyclables to be stored for up to 12 months. Tr. June 7, 2000 at 1173-1175.

After reading Rule 1.10.00 regarding applications for variances, Mr. Summerly agreed that Applicant had not followed the procedure set forth in the Regulations to obtain approval for a variance. Tr. June 7, 2000 at 1176-1178.

Rule 7.2.02 Storage

> **(c) Storage of unprocessed and/or processed construction and demolition debris must be in designated areas, and stockpiles must not exceed twenty (20) feet in height and fifty (50) feet in width. A minimum separation of fifty (50) feet must also be maintained between stockpiles, and between stockpiles and buildings or other structures. In addition, unprocessed and/or processed construction and demolition debris must not be compacted, or covered with soil or other materials…**

The Deficiencies List cited Applicant's storage of unprocessed, partially processed and processed materials in violation of this Rule. Specifically, the OWM asserted that the maximum height and width requirements and the minimum separation distances were not being met at the facility. Additionally, heavy vehicles had been observed on the piles compacting the waste in violation of the Rule. List at 8.

Although the application included a variance request regarding the minimum separation for stockpiled materials, the OWM stated that no supporting documentation was provided to warrant granting a variance. *Id*.

Mr. Summerly testified that Applicant had explained the need for a variance from the 50 foot requirements based upon the seasonal nature of the business. Tr. April 12, 2000 at 463-464. He stated that they never submitted a technical argument in support of the variance request. Tr. April 12, 2000 at 466. The September Response had however, provided the rationale for a variance, stating that the current method of stockpiling limited the potential for heat generation because there was no compaction or cover material. Appl 1 J at 18/22. When questioned further, Mr. Summerly stated that he did not know whether Global had a compactor, had never seen one on site, and had never observed materials in the stockpiles being compacted. Tr. June 7, 2000 at 1184-1185.

Mr. Summerly also testified that the proposed storage areas had been reduced in size and relocated to provide additional separation between the piles but that Figure 4, submitted with the April Response Summary, had not been revised in the September Response to reflect the changes. Tr. April 12, 2000 at 348-349; Tr. June 7, 2000 at 1170.

Rule 7.2.03 Wastewater and Leachate:

> **All water used in processing the construction and demolition debris, and cleaning of the facility, as well as leachate from any refuse collected in storage pits or transfer areas, shall be disposed of in a manner that will not pollute any source of private or public water supply, or any of the waters or groundwaters of the State and shall be disposed of in accordance with all state and federal laws and regulations.**

The Deficiencies List stated that the application did not address the collection of leachate and runoff control, nor did it provide for the protection of any potential

onsite or offsite "receptors" in the vicinity of the site. Runoff from the flotation separating tank was also not addressed in the application, according to the OWM. List at 8.

In response to questions by Applicant's counsel regarding this issue, Mr. Summerly stated that GZA had proposed monitoring both groundwater and surface water to assess impact from the facility. Tr. April 12, 2000 at 467-468. The witness disagreed with OWM that runoff from the flotation separation tank was a concern. He stated that a small amount of spillage occurred from the tank but that he had not observed any runoff. Tr. April 12, 2000 at 469-470. Water, according to the witness, might spill out of the tank and be absorbed by wood chips at the base of the area, "and then into the ground surface". Tr. April 12, 2000 at 470.

He stated that water was also used for "road wetting" for dust control. He assumed equipment was washed but had never observed it. He agreed that Global's submittal did not mention cleaning vehicles at the site and did not mention any discharge from the float tank. Tr. June 7, 2000 at 1198-1199.

Rule 7.2.04 Groundwater Monitoring Well:

> **Facilities that process construction and demolition debris may be required by the Department to install monitoring wells at locations approved by the Department…**

The Deficiencies List, referring to its comment on the application's problems under Rule 7.1.06 (f), reiterated that the monitoring wells, as installed, failed to provide adequate monitoring for the areas outside of the Berm and Phase One areas. The OWM also stated that the wells were installed without obtaining the Department's approval. List at 9.

Mr. Summerly testified that a groundwater monitoring program had been requested by the Department. The Department specifically requested that one

proposed well be relocated; Mr. Summerly testified that all but that one well received Departmental approval. He stated that they were unable to locate this well at the requested new location due to subsurface conditions; they decided they would be unable to drill at that location due to the boulders and stumps. Tr. June 7, 2000 at 1205-1207.

Rule 7.2.05 Buffer:

> **A buffer zone, or approved equally protective alternative measure(s) must be identified and maintained between all processed and unprocessed construction and demolition debris stockpiles, processing activities and the property line of the facility. Said buffer zone must be of sufficient distance to address dust, odors, litter, or any other concern or condition identified by the Department. Alternative measures may include, but are not limited to enclosing operations and/or storage within the confines of a protective structure, fencing, screening, vegetation or approval equal.**

The Deficiencies List, citing this Rule, referred to its comments regarding Rule 1.7.15. List at 9 (see also List at 3).

Rule 7.2.05 and Rule 1.7.15 address buffer zone requirements. Rule 1.7.15 applies to all composting facilities and solid waste management facilities; Rule 7.2.05 contains the additional requirements for all facilities that process construction and demolition debris.

The evidence presented on buffer zones is considered above in the Rule 1.7.15 discussion.

Rule 7.2.06 Fire Protection:

> **A facility shall not pose a hazard to the health and safety of persons or property from fires. A fire protection plan must be submitted to the local fire authority prior to operation…**

The Deficiencies List stated that a fire protection plan was not submitted with the application nor was any documentation provided to the OWM that the local fire department had received the plan. List at 9.

The evidence presented on the existence of a fire protection plan is considered above in the Rule 7.1.05(p) discussion.

Operating Standards Deficiencies - Conclusion

I have considered the testimony, the October 1997 Amended and Restated Operation Plan and the GZA submittals and conclude that Applicant has not met its burden to prove that its proposals comply with the Operating Standards (Rule 7.2.00 et seq.) set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

Applicant failed to provide information regarding a storage limit for processed construction and demolition debris stockpiles and therefore did not comply with the clear requirements of Rule 7.2.02(a).

Mr. Summerly admitted that Applicant did not provide records and mechanisms to show compliance with Rule 7.2.02(b) because the facility did not have the capacity to process 75 percent of the recyclable material within six (6) weeks and would not be able to remove all material from the site within a three (3) month period.

Applicant's submittals failed to show compliance with Rule 7.2.02(c) in part because Figure 4, the Operation Plan prepared by Garafalo, had not been revised to show that the proposed storage areas had been reduced in size and relocated to provide additional separation between the piles. Notwithstanding that the storage areas had been recently altered, Applicant failed to present evidence that the submittals were in actual compliance with this Rule.

The October 1997 Amended and Restated Operation Plan briefly addressed containing leachates through the facility's storage of non-processible wastes within a bermed area and through daily removal. Neither the Plan nor the other submittals

addressed the use of water in processing the construction and demolition debris (specifically, the use of water in the flotation separating tank) and in cleaning at the facility, or the disposal of any leachate as required under Rule 7.2.03. Although Mr. Summerly testified that any such leachate or runoff would be insignificant, the issue should have been addressed as mandated by the Rule.

As previously discussed, Applicant also failed to comply with the Rules addressing installation of monitoring wells at locations approved by the Department, demarcation of the buffer zone, and documentation

that a fire protection plan had been submitted to the local fire authority.

V. Construction and Demolition Debris: Reuse, Sampling, and Testing Requirements Deficiencies

This section of the Deficiencies List considered the application's compliance with the provisions of Regulation No. 7.3 and found it deficient in the below areas.

Rule 7.3.01 General Information:

(a) All facilities that process or separate construction and demolition debris and generate screenings and/or wood chips for reuse must sample and test these materials in accordance with Rules 7.3.02 and 7.3.03.

The Deficiencies List stated that the Product Sampling and Analysis Plan (PSAP) submitted by the Applicant on September 2, 1999, failed to provide an adequate testing schedule for the proposed end uses of these materials, "given the variability of the waste stream". List at 9.

The evidence presented on the PSAP is considered above in the Rule 7.1.05(t) discussion.

Rule 7.3.02 Screenings: Reuse, Sampling and Testing Requirements

The Deficiencies List did not cite the particular subsection where Applicant was non-compliant but stated that the application "must address reuse, sampling and testing requirements of screening in accordance with this Rule". List at 9.

It appears from the List's comments that testing results from the screenings had indicated that a portion of the screenings cannot properly be used as "plantable soil" despite Applicant's representation that all screenings from the construction and demolition debris waste stream would be used as "plantable soil". The application failed to address the management of these screenings that cannot be used as plantable soil. List at 10.

Evidence presented on the use of screenings is discussed throughout this Decision, particularly in the discussion of Rules 7.1.05(k), 7.1.05(s), 7.1.05(t), and 7.1.05(u).

Rule 7.3.03 Wood Chips: Reuse, Sampling and Testing Requirements

(c) All projects utilizing wood chips, except for fuel usage must meet the following analytical testing requirements at a minimum, unless a separate approval is received from the Department…

(d) The sampling and testing plan required as part of the facility's operating plan must include a sampling and testing schedule for all of the above-described constituents.

(e) Wood chips generated for use as a fuel for boilers and wood-fired power plants must meet the requirements for those facilities. The facility operating plan must indicate all wood fuel facilities to be utilized.

The Deficiencies List stated that the Operating Plan did not identify the destinations or names of the facilities that would receive the materials nor did it provide the testing and quality standards for the proposed products. List at 10.

Mr. Summerly admitted that Global did not submit to the Department the names of the wood fuel facilities it would be utilizing. Despite assurance from the Department

that if the information was considered a confidential business document, it should be submitted separately from the Operation Plan and clearly marked to preserve confidentiality, the witness stated that Mr. Bettez, Vice President of Global, considered this to be inadequate protection and would not provide the list to GZA. Tr. June 7, 2000 at 1213-1216.

Construction and Demolition Debris: Reuse, Sampling, and Testing Requirements Deficiencies - Conclusion

Applicant has not met its burden to prove that its proposals comply with sections 7.3.01(a) and 7.3.03(e) of the Reuse, Sampling and Testing Requirements set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

I reach this conclusion based upon Applicant's refusal to submit the names of the wood fuel facilities as is required under Rule 7.3.03(e). Applicant also failed to comply with section 7.3.01(a) because that Rule incorporates compliance with Rule 7.3.03.

I find that Applicant's PSAP appears to satisfy the requirements of Rule 7.3.02. The evidence presented by the OWM is insufficient to rebut Applicant's evidence of compliance with Rule 7.3.02.

VI. Variance Request from State Law

The Deficiencies List stated that Applicant's request for a variance from state law and from Rule 7.2.02, to allow for storage of unprocessed recyclables for up to 12 months, was not within the Department's authority to grant. The List stated that the Refuse Disposal Act prohibits storage of material onsite for any period exceeding three (3) months.

The evidence presented on Global's request for this variance is considered above in the Rule 7.2.02(b) discussion.

Conclusion

I have reviewed the above-referenced section of the Refuse Disposal Act. It provides in pertinent part:

> "Construction and demolition debris processing facility" means a solid waste management facility that receives and processes construction and demolition debris of more than one hundred fifty (150) tons per day, and that can demonstrate, through records maintained at the facility, that seventy-five percent (75%) of the recyclable material received by the facility is processed and removed from the site within six (6) weeks of receipt on a continuous basis, and that in no case stores material on site for over three (3) months; provided, however, such facilities do not include municipal compost facilities. R.I. GEN. LAWS §23-18.9-7(3) (emphasis added)

I conclude that OWM's interpretation of this section -- that the Department is without the authority to extend the three (3) month storage period -- is consistent with the statute.

VII. Failure to Submit Final Revised Operating Plan

The OWM's concluding comment in the Deficiencies List recognized that Applicant's responses to the Department's comments were not incorporated into a final revised Operating Plan document. List at 10.

Mr. Summerly testified that it had been his understanding that after submitting the April Response Summary, he would meet with the Department, discuss the variance requests, and then submit a fully-revised application. The meeting did not take place until September 23, 1999. He testified that at that meeting he was informed that the fully-revised application must be submitted before the public comment period had ended. Tr. April 12, 2000 at 480-481.

Yet Mr. Summerly was aware the Department's issuance of the Notice of Intent to Deny on June 16, 1999 triggered the timing of the public workshop, public hearing and public comment deadline under the Refuse Disposal Act. The witness also conceded that the Notice of Intent to Deny stated that no additional submittals would be accepted after October 2, 1999. Tr. April 12, 2000 at 484. He also agreed that Applicant was told in June 1999 that it should revise the Operating Plan and submit it with the application. Applicant failed to submit a revised operating plan with the September Response. Tr. June 7, 2000 at 1216-1217.

Conclusion

The September Response, in particular, supplemented the October 1997 Amended and Restated Operating Plan and the Closure Plan. The September Response, however, did not contain complete information and several times indicated that more specifics would be forthcoming.

Rule 1.5.01 provides in pertinent part:

1.5.01 Plans and Specifications

> (a) Initial Application: Applications for licenses and registrations must include plans and specifications. All applicants, regardless of facility type, must demonstrate their ability to comply with all General Operating Standards set forth in Section 1.7.00 of these Rules and Regulations, as well as the general requirements in this rule. Each applicant must also submit all plans and specifications required for the particular type of facility, as enumerated in Solid Waste Regulations Numbers 2 through 8.

Applicant was therefore required to present comprehensive plans that met the mandates of section 1.5.00's General Requirements and Procedures, section 1.7.00's General Operating Standards, and Solid Waste Regulation No. 7 that governs construction and demolition debris processing facilities. The plans submitted by

Applicant, even as supplemented, are woefully incomplete and inadequate to sustain its burden of proof in this application proceeding.

VIII. OWM's Motion to Dismiss

At the conclusion of Applicant's case, the OWM moved to dismiss the appeal on the grounds that the Applicant failed to meet its burden to show that the application submitted by Global Waste Recycling, Inc. complied with the requirements set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997 and R.I. GEN. LAWS §23-18.9-1 (the Refuse Disposal Act). Tr. June 7, 2000 at 1233-1236.

In his argument, OWM's counsel cited the many deficiencies with the application and the many items that had not been submitted with the application that were required by the Regulations.

A ruling on OWM's motion to dismiss was reserved for issuance with this Decision and Order and is entered below.

IX. Costs of the Appeal Process

Pursuant to R.I. GEN. LAWS §23-18.9-9, the Hearing Officer is required to determine and apportion to the Applicant the actual costs of the appeal process, exclusive of attorneys' fees. The procedure for determining and apportioning the actual costs incurred by the Office of Waste Management and by the Administrative Adjudication Division, as well as provision for objection and oral argument by Applicant, will be established by separate order.

Wherefore, after considering the stipulations of the parties and the testimonial and documentary evidence of record, I make the following:

FINDINGS OF FACT

1. Applicant, Global Waste Recycling, Inc., ("Applicant"or "Global") is a corporation duly organized and existing pursuant to the laws of the State of Rhode Island and doing business located at Colvintown Road, in the Town of Coventry, County of Kent, State of Rhode Island. Applicant operates a Construction and Demolition Debris Processing Facility at that location.

2. In a Consent Judgment dated June 30, 1995 Global agreed that if rules and regulations applying to recycling facilities were later adopted, then Global would make application for a license under the regulations and would comply with any new regulations promulgated for the regulation of recycling and solid waste management facilities.

3. In January 1997 the Department of Environmental Management ("Department") adopted Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, including Solid Waste Regulation No. 7 entitled "Facilities that Process Construction and Demolition Debris."

4. After January 1997 Global submitted documents to the Department as part of an application for a construction and demolition debris processing facility license.

5. On or about October 14, 1997 Global submitted an Amended and Restated Operation Plan and a Closure Plan to the Department.

6. On May 29, 1998, the Department issued a letter notifying the Applicant of specific deficiencies in the application and plans submitted.

7. The Applicant submitted a revised application and operating plan to the Department on July 20, 1998.

8. On December 21, 1998, the Department again notified the Applicant that the application was deficient. This letter required the Applicant to correct all deficiencies on or before February 28, 1999 or the application would be denied.

9. At the Applicant's request, the Department extended the February 28 deadline to April 2, 1999.

10. The Department's Office of Waste Management ("OWM") issued to this Applicant a Notice of Intent to Deny on June 16, 1999.

11. The Department held an informational public workshop on the application on June 29, 1999. The Department held a public comment hearing on the application on September 2, 1999 and the Department continued to accept written comments until October 2, 1999.

12. On October 1, 1999, Global submitted additional revisions to the application.

13. The Department denied Global's application for a license on December 30, 1999.

14. On January 6, 2000, Global requested a hearing on the denial of the application with the Department's Administrative Adjudication Division.

15. The facility does not have existing fencing around its perimeter and Applicant did not propose fencing the facility for its operating, closure and/or post closure activities.

16. Applicant did not identify the maximum amounts of materials (processed and unprocessed) that may require third party removal during closure and did not identify costs of third party removal, transport and disposal of materials in the event of closure of the facility.

17. Applicant did not submit closure cost estimates to the Department.

18. The application submittals did not contain a closure fund agreement.

19. Applicant's operation plan and closure plan do not contain a groundwater monitoring program for the areas down-gradient of the Phase One stockpile or the wetlands protection berm.

20. Applicant did not install a groundwater monitoring well on the easterly side of the wetlands protection berm as requested by the Department.

21. Applicant did not have Department approval for installing a groundwater monitoring well on the westerly side of the wetlands protection berm.

22. Applicant did not provide runoff and drainage calculations to address any net increase in runoff from proposed site improvements at the facility.

23. Applicant did not address in its submittals the disposal of any water discharged from the flotation separating tank or of any water used in cleaning equipment or vehicles at the facility.

24. Applicant did not identify methods for leachate containment for the construction and demolition debris raw product on site or for the hard products stockpile.

25. Applicant did not identify a buffer zone area between all construction and demolition debris stockpiles and the property line of the facility. Specifically, Applicant proposed the stockpiling of materials in the Phase One area.

26. Deficiencies and items of noncompliance with the regulations existed at the facility during the pendency of the application.

27. Applicant did not provide evidence that the facility's proposed operating hours were consistent with zoning or other local ordinances of the Town of Coventry.

28. Applicant's dust control program for the facility included adding pavement to the entrance of the facility, using calcium chloride and spraying water, and sweeping the roadbeds.

29. Applicant's odor control program did not address odor control for processed materials or for existing on-site material.

30. The example Summary of the facility's records summarized the weights of incoming raw products during the period July 1, 1997 through September 27, 1999; the Summary also identified weights of all outgoing materials and some of the materials that were left on site for that period.

31. Applicant did not provide documentation that fire control and prevention provisions had been included in the facility's operation plan.

32. Applicant did not provide documentation that the local fire department had received the facility's fire protection plan.

33. Applicant's Site and Safety Procedures Manual provides insufficient information as to how non-processible waste, hazardous waste and waste not authorized by the Department will be identified, handled and removed from the facility.

34. Applicant identified screenings as a recyclable material that it was having difficulty marketing.

35. The use of the screenings was still being evaluated at the time of Applicant's final submittal to the Department.

36. Applicant did not identify how the disposal of unmarketed screenings would be achieved.

37. Applicant submitted a Product Sampling and Analysis Plan that applied to wood chips and screenings.

38. Applicant did not identify its customers or the receiving facilities for the recyclable materials, including the wood fuel facilities.

39. Applicant did not identify a storage limit for processed materials at the facility.

40. Due to the incoming material stream, the facility cannot process and remove seventy-five percent (75%) of the recyclable material within six (6) weeks of its receipt at the facility.

41. The facility is unable to remove all material from the site within a three (3) month period.

42. Applicant requested a variance to allow for storage of unprocessed recyclables for up to twelve (12) months.

43. Applicant requested a variance regarding the minimum separation distances for stockpiled materials.

44. Applicant's requests for variance were not signed by the owner and operator of the facility, and by a registered professional engineer.

45. The Deficiencies List states that the Department has no authority to grant a variance from the Refuse Disposal Act's prohibition against storage of materials on site for over three (3) months.

46. Applicant was not granted a variance regarding the minimum separation distances for stockpiled materials.

47. Applicant had reduced the size of the proposed storage areas and had relocated the materials to provide additional separation between the piles but did not submit documentation to the Department reflecting these changes.

48. Applicant did not submit a final revised operating plan to the Department.

CONCLUSIONS OF LAW

After due consideration of the documentary and testimonial evidence of record and based upon the above findings of fact, I conclude the following as a matter of law:

1. Applicant made a timely request for hearing in accordance with section 1.11.03 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

2. Applicant failed to prove by a preponderance of the evidence that it complied with sections 7.1.06(a), 7.1.06(c), 7.1.06(e), 7.1.06(f), 7.1.06(h), and with section 7.2.08 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

3. Applicant failed to prove by a preponderance of the evidence that it complied with section 1.7.02(b) and with section 1.7.15 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

4. Applicant failed to prove by a preponderance of the evidence that it complied with section 7.1.01(d) and with sections 7.1.05(b), 7.1.05(g), 7.1.05(j), 7.1.05(k), 7.1.05(n), 7.1.05(p), 7.1.05(q), 7.1.05(s), 7.1.05(u) and 7.1.05(v) of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

5. Applicant proved by a preponderance of the evidence that its Dust Control Program complied with section 7.1.05(e) of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

6. Applicant proved by a preponderance of the evidence that its proposed Product Sampling and Analysis Plan complied with section 7.1.05(t) of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

7. Applicant failed to prove by a preponderance of the evidence that it complied with sections 7.2.02(a), 7.2.02(b), 7.2.02(c), with section 7.2.03, with section 7.2.04, with section 7.2.05 and with section 7.2.06 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

8. Applicant failed to follow the procedure for requesting a variance as set forth in sections 1.10.00 et seq. of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

9. Applicant failed to prove by a preponderance of the evidence that it complied with section 7.3.01(a) and section 7.3.03 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

10. Applicant proved by a preponderance of the evidence that its proposed Product Sampling and Analysis Plan complied with section 7.3.02 of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

11. The OWM's conclusion that the Department did not have the authority to grant a variance and extend the three (3) month storage of materials limitation is consistent with the provisions of R.I. GEN. LAWS §23-18.9-7(3).

12. Applicant failed to prove by a preponderance of the evidence that it complied with section 1.5.01(a) of the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997.

13. Applicant has failed to prove by a preponderance of the evidence that the facility complies with the requirements set forth in the Rules and Regulations for Composting Facilities and Solid Waste Management Facilities, January 1997 and with R.I. GEN. LAWS §23-18.9-1 et seq. (the Refuse Disposal Act).

Wherefore, based upon the above Findings of Fact and Conclusions of Law, it is hereby

ORDERED

1. The application of Global Waste Recycling, Inc. for a Construction and Demolition Debris Processing Facility license is DENIED.

2. The Motion to Dismiss made by the Office of Waste Management at the hearing is herewith GRANTED.

3. The Order Establishing Schedule for Determination and Apportionment of Costs of the Appeal Process will be issued to the parties forthwith.

Entered as an Administrative Order this 14th day of March, 2001 and herewith recommended to the Director for issuance as a Final Agency Order.

_____

Mary F. McMahon
Hearing Officer
Administrative Adjudication Division
Department of Environmental Management
235 Promenade Street, Third Floor
Providence, Rhode Island 02908
(401) 222-1357

Entered as a Final Agency Order this 15th day of March, 2001.

_____

Jan H. Reitsma
Director
Department of Environmental Management
235 Promenade Street, Fourth Floor
Providence, Rhode Island 02908

CERTIFICATION

I hereby certify that I caused a true copy of the within Order to be forwarded by first-class mail, postage prepaid, to John B. Webster, Esquire, 1515 Smith Street, North Providence, 02911; and via interoffice mail to: John Langlois, Legal Counsel, DEM Office of Legal Services, 235 Promenade St., 4th Fl., Providence, RI 02908; on this 15th day of March, 2001.

_____

APPENDIX A
LIST OF EXHIBITS

The below-listed documents are marked as they were admitted into evidence:

APPLICANT'S EXHIBITS:

Appl 1 A for Id	COM file labeled by DEM as "Global Coventry"
Appl 1 B Full	Summary dated April 1999 without attached plan
Appl 1 C for Id	Subfile No. 448 - Correspondence Global Recycling 1997
Appl 1 D for Id	Subfile No. 448 - Correspondence Global Recycling 1998
Appl 1 E for Id	Subfile - Global correspondence 1996
Appl 1 F Full	Operation Plan
Appl 1 G for Id	Global/Analytical #448
Appl 1 H for Id	Global Inspections without Photos
Appl 1 I Full	Subfile #448 Consent Agreements
Appl 1 J Full	Response to June 16, 1999 Comments - Global
Appl 1 K for Id	June 16, 1999 Notice of Intent to Deny
Appl 1 L for Id	December 30, 1999 Denial Letter
Appl 1 M for Id	Correspondence 1999
Appl 2	Resume' of Edward A. Summerly (3 pp.)

Full

OWM'S EXHIBITS:

OWM 1 Full — Copy of Denial Letter dated December 30, 1999 (thirteen pages).

OWM 2 Full — Copy of Leo Hellested's resume (three pages).

OWM 3 Full — Copy of Applicant's Request for Hearing (two pages).

OWM 4 Full — August 4, 1997 Interoffice Memo from Dan Russell to Leo Hellested.